

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

.....X
JOHN ADAMO,

Plaintiff,

-against-

YONKERS CONTRACTING COMPANY, INC.,

Defendant.

Case No.: 7:23-cv-00489-VB

.....X
ANSWER

Defendant Yonkers Contracting Company, Inc. (“Yonkers Contracting”) by and through its attorneys, Jackson Lewis P.C., hereby responds to the allegations in the Complaint filed by Plaintiff John Adamo (hereinafter “Plaintiff”) as follows:

AS TO “NATURE OF THE CASE”

1. Defendant denies each and every allegation set forth in Paragraph 1 of the Complaint, except admits Plaintiff purports to assert claims under the FMLA, the FFCRA, and the New York Human Rights Law.

AS TO “JURISDICTION”

2. Defendant admits the allegations set forth in Paragraph 2 of the Complaint.
3. Defendant denies each and every allegation set forth in Paragraph 3 of the Complaint.

AS TO “PARTIES”

4. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 4 of the Complaint.

5. Defendant admits the allegations set forth in Paragraph 5 of the Complaint.

6. Defendant denies each and every allegation set forth in Paragraph 6 of the Complaint.

7. Defendant admits the allegations set forth in Paragraph 7 of the Complaint.

8. Defendant admits the allegations set forth in Paragraph 8 of the Complaint.

9. Defendant denies each and every allegation set forth in Paragraph 9 of the Complaint.

AS TO “STATEMENT OF CLAIMS”

10. Defendant admits the allegations set forth in Paragraph 10 of the Complaint.

11. Defendant denies each and every allegation set forth in Paragraph 11 of the Complaint.

12. Defendant denies each and every allegation set forth in Paragraph 12 of the Complaint.

13. Defendant denies each and every allegation set forth in Paragraph 13 of the Complaint.

14. Defendant denies each and every allegation set forth in Paragraph 14 of the Complaint.

15. Defendant admits the allegations set forth in Paragraph 15 of the Complaint.

16. Defendant denies each and every allegation set forth in Paragraph 16 of the Complaint.

17. Defendant denies each and every allegation set forth in Paragraph 17 of the Complaint.

18. Defendant denies each and every allegation set forth in Paragraph 18 of the Complaint.

19. Defendant denies each and every allegation set forth in Paragraph 19 of the Complaint.

20. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 20 of the Complaint.

21. Defendant denies each and every allegation set forth in Paragraph 21 of the Complaint.

22. Defendant denies each and every allegation set forth in Paragraph 22 of the Complaint.

23. Defendant denies each and every allegation set forth in Paragraph 23 of the Complaint.

24. Defendant denies each and every allegation set forth in Paragraph 24 of the Complaint.

25. Defendant denies each and every allegation set forth in Paragraph 25 of the Complaint.

26. Defendant denies each and every allegation set forth in Paragraph 26 of the Complaint.

27. Defendant denies each and every allegation set forth in Paragraph 27 of the Complaint.

28. Defendant denies each and every allegation set forth in Paragraph 28 of the Complaint.

29. Defendant denies each and every allegation set forth in Paragraph 29 of the Complaint.

30. Defendant denies each and every allegation set forth in Paragraph 30 of the Complaint.

31. Defendant denies each and every allegation set forth in Paragraph 31 of the Complaint.

32. Defendant denies each and every allegation set forth in Paragraph 32 of the Complaint.

33. Defendant denies each and every allegation set forth in Paragraph 33 of the Complaint.

34. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 34 of the Complaint.

35. Defendant denies each and every allegation set forth in Paragraph 35 of the Complaint.

36. Defendant denies each and every allegation set forth in Paragraph 36 of the Complaint.

37. Defendant denies each and every allegation set forth in Paragraph 37 of the Complaint.

38. Defendant denies each and every allegation set forth in Paragraph 38 of the Complaint.

39. Defendant admits the allegations set forth in Paragraph 39 of the Complaint.

40. Defendant denies each and every allegation set forth in Paragraph 40 of the Complaint.

41. Defendant denies each and every allegation set forth in Paragraph 41 of the Complaint.

42. Defendant denies each and every allegation set forth in Paragraph 42 of the Complaint.

43. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 43 of the Complaint.

44. Defendant denies each and every allegation set forth in Paragraph 44 of the Complaint.

45. Defendant denies each and every allegation set forth in Paragraph 45 of the Complaint.

**AS TO “FIRST CAUSE OF ACTION
(FMLA Interference)”**

46. Defendant repeats, realleges and incorporates by reference each and every response set forth in Paragraphs 1 through 45 above, as if fully set forth herein in response to Paragraph 46 of the Complaint.

47. Defendant denies each and every allegation set forth in Paragraph 47 of the Complaint.

48. Defendant denies each and every allegation set forth in Paragraph 48 of the Complaint.

49. Defendant denies each and every allegation set forth in Paragraph 49 of the Complaint.

50. Defendant denies each and every allegation set forth in Paragraph 50 of the Complaint.

51. Defendant denies each and every allegation set forth in Paragraph 51 of the Complaint.

52. Defendant denies each and every allegation set forth in Paragraph 52 of the Complaint.

**AS TO “SECOND CAUSE OF ACTION
(FMLA Retaliation)”**

53. Defendant repeats, realleges and incorporates by reference each and every response set forth in Paragraphs 1 through 52 above, as if fully set forth herein in response to Paragraph 53 of the Complaint.

54. Defendant denies each and every allegation set forth in Paragraph 54 of the Complaint.

55. Defendant denies each and every allegation set forth in Paragraph 55 of the Complaint.

56. Defendant denies each and every allegation set forth in Paragraph 56 of the Complaint.

57. Defendant denies each and every allegation set forth in Paragraph 57 of the Complaint.

58. Defendant denies each and every allegation set forth in Paragraph 58 of the Complaint.

59. Defendant denies each and every allegation set forth in Paragraph 59 of the Complaint.

**AS TO “THIRD CAUSE OF ACTION
(FFCRA)”**

60. Defendant repeats, realleges and incorporates by reference each and every response set forth in Paragraphs 1 through 59 above, as if fully set forth herein in response to Paragraph 60 of the Complaint.

61. Defendant denies each and every allegation set forth in Paragraph 61 of the Complaint.

62. Defendant denies each and every allegation set forth in Paragraph 62 of the Complaint.

63. Defendant denies each and every allegation set forth in Paragraph 63 of the Complaint.

64. Defendant denies each and every allegation set forth in Paragraph 64 of the Complaint.

65. Defendant denies each and every allegation set forth in Paragraph 65 of the Complaint.

66. Defendant denies each and every allegation set forth in Paragraph 66 of the Complaint.

67. Defendant denies each and every allegation set forth in Paragraph 67 of the Complaint.

68. Defendant denies each and every allegation set forth in Paragraph 68 of the Complaint.

69. Defendant denies each and every allegation set forth in Paragraph 69 of the Complaint.

70. Defendant denies each and every allegation set forth in Paragraph 70 of the Complaint.

71. Defendant denies each and every allegation set forth in Paragraph 71 of the Complaint.

**AS TO “FOURTH CAUSE OF ACTION
(Failure to Provide a Reasonable Accommodation – State HRL)”**

72. Defendant repeats, realleges and incorporates by reference each and every response set forth in Paragraphs 1 through 71 above, as if fully set forth herein in response to Paragraph 72 of the Complaint.

73. Defendant denies each and every allegation set forth in Paragraph 73 of the Complaint.

74. Defendant denies each and every allegation set forth in Paragraph 74 of the Complaint.

75. Defendant denies each and every allegation set forth in Paragraph 75 of the Complaint.

76. Defendant denies each and every allegation set forth in Paragraph 76 of the Complaint.

77. Defendant denies each and every allegation set forth in Paragraph 77 of the Complaint.

78. Defendant denies each and every allegation set forth in Paragraph 78 of the Complaint.

79. Defendant denies each and every allegation set forth in Paragraph 79 of the Complaint.

**AS TO “FIFTH CAUSE OF ACTION
(Discriminatory Termination – State HRL)”**

80. Defendant repeats, realleges and incorporates by reference each and every response set forth in Paragraphs 1 through 79 above, as if fully set forth herein in response to Paragraph 80 of the Complaint.

81. Defendant denies each and every allegation set forth in Paragraph 81 of the Complaint.

82. Defendant denies each and every allegation set forth in Paragraph 82 of the Complaint.

83. Defendant denies each and every allegation set forth in Paragraph 83 of the Complaint.

84. Defendant denies each and every allegation set forth in Paragraph 84 of the Complaint and the relief requested thereunder.

DEFENDANT'S AFFIRMATIVE AND OTHER DEFENSES

85. Defendant asserts the following affirmative and other defenses without assuming any burden of proof that Defendant would not otherwise have.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

86. Plaintiff's claims are barred because Defendant acted in good faith to comply with U.S. Department of Labor guidance and guidelines, as they existed at the time of the challenged decision(s).

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

87. Plaintiff's claims are barred because Defendant is not a covered employer under the Families First Coronavirus Response Act in that it employs more than 500 employees.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

88. Plaintiff's claims are barred because Plaintiff's leave, or a portion thereof, was sought and taken before April 1, 2020 or after December 31, 2020.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

89. Plaintiff's claims are barred because Plaintiff was not unable to work.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

90. Plaintiff was not eligible for FMLA at all relevant times.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

91. Plaintiff failed to provide proper and timely notice of his need for leave and failed to provide timely and sufficient information to place Defendant on notice that any leave was covered by FMLA.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

92. Plaintiff failed to timely complete and return FMLA certification forms to support his absence despite Defendant's provision of the necessary form and FMLA information and Defendant's follow up requests when what Plaintiff returned did not support the absence.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

93. Any claim for liquidated damages fails because Defendant's actions were in good faith and Defendant had reasonable grounds for believing that the act or omission was not a violation of the law.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

94. Plaintiff's claims are barred, in whole or in part, because of Plaintiff's failure to exhaust its administrative remedies.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

95. Plaintiff's claims for emotional distress are preempted by the New York State Worker's Compensation Law.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

96. Plaintiff's claims for damages in the form of backpay and benefits are barred by Plaintiff's failure to diligently seek other employment or to otherwise mitigate his damages.

RESERVATION OF DEFENSES

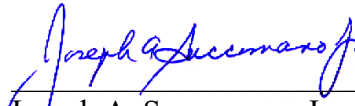
97. Defendant reserves the right to amend its Answer to raise affirmative defenses as facts supporting those claims become known through the course of discovery.

WHEREFORE, Defendant prays that:

- (a) Plaintiff's Complaint be dismissed with prejudice;
- (b) Each and every demand, claim, and prayer for relief contained in Plaintiff's Complaint be denied;
- (c) Defendant be awarded reimbursement for costs and attorneys' fees of defending this action; and,
- (d) Such other and further relief is deemed just and proper.

Respectfully submitted,

JACKSON LEWIS P.C.

By: 

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Dated: March 13, 2023
White Plains, New York

Attorney for Defendant

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

.....X

JOHN ADAMO,

Plaintiff,

-against-

Case No.: 7:23-cv-00489-VB

YONKERS CONTRACTING COMPANY, INC.,

Defendant.

.....X

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of Defendant's Answer to Plaintiff's Complaint has been electronically filed and served via ECF on March 13, 2023 upon counsel of record at the address set forth below:

Philip H. Seelig, Esq.
SEELIG LAW OFFICE
299 Broadway, Suite 1600
New York, New York 10007
phil@pseeliglaw.com

Attorney for Plaintiff



Michelle Provost